IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8779 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANCHAL MANGALDAS AMBARAM

Versus

STATE OF GUJARAT

Appearance:

MR DK ACHARYA for Petitioner

MR PR JOSHI AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/10/2000

ORAL JUDGEMENT

By a registered sale-deed dated 11th September, 1974, the petitioner has purchased a piece of residential land admeasuring 400 Sq.Mts. situated at village Chhapi, Taluka-Vadgam, Sub-District-Pananpur,

District-Banaskantha, from Mohmedan Industrial Society. It appears that in contravention of the terms of the sale, the petitioner has started a saw-mill on part of the said land. The petitioner has thus changed the nature of non-agricultural use of the said land without permission. By a notice dated 22nd April, 1988, issued by the Collector, Banaskantha, the petitioner was informed that he had changed the nature of the non-agricultural use of the land in question, and was called upon whether he would be agreeable to get the breach regularised on payment of Rs.8000/-. It appears that the petitioner did not agree to get the said breach regularised on payment of Rs.8000/-. On 25th January, 1991, the petitioner was informed that the Government had decided to impose fine of Rs.32,000/- and that the said amount shall be deposited with the Talati of village Chhapi. Feeling aggrieved, the petitioner preferred Revision before the State Government. The said Revision was dismissed on the ground that the decision impugned was that of the Government and the Government had no power to revise its own order under section 211 of the Bombay Land Revenue Code. Therefore, the present petition.

Mr. Acharya has contended that there is no justification for imposition of fine to the tune of Rs.32,000/- and the petitioner is not able to pay anything more than Rs.1000/-. He has also contended that before imposing fine, the petitioner has not been given an opportunity of hearing, nor the petitioner has been explained how the amount of fine has been worked out.

It is admitted that the land in question was sold to the petitioner for residential purpose alone. It is also admitted that in breach of the terms of the sale, the petitioner has started a saw-mill on the land sold to him and has thus changed the nature of non-agricultural use of the said land. Whether such change of user should be regularised or shall be demolished, is a matter to be decided by the executive and this court would not interfere in such matter. However, in the event the Government decides to impose fine, the petitioner shall be entitled to an opportunity of showing cause against such action. There is n[othing on the record to indicate that the petitioner had been given such an opportunity before the impugned order dated 25th January, 1991, was made.

In above view of the matter, the petition deserves to be allowed on this limited ground alone. Accordingly, the petition is allowed. The impugned order

dated 25th January, 1991 (Annexure E to the petition) is quashed and set aside on condition that the petitioner deposits a sum of Rs.15,000/- with the Talati of the village Chhapi on or before 2nd January, 2001. The proceedings as regards the imposition of fine for the unauthorised change of user may be initiated afresh and the petitioner be given an opportunity to show cause against any action which may be intended to be taken against the petitioner. In the event any amount of fine is imposed upon the petitioner, the aforesaid sum of Rs.15,000/shall be adjusted against such amount of fine. In the event the petitioner fails to deposit the sum of Rs.15,000/- as directed hereinabove, the impugned order dated 25th January, 1991 (Annexure-E to the petition) shall stand confirmed. In that event, the Collector, Banaskantha, shall be at liberty to proceed further in accordance with law. Rule is made absolute in the above terms. The parties shall bear their own costs.

[Miss R.M Doshit, J.]

JOSHI*